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87-1528
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

GEORGE V.

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

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QUESTIONS PRESENTED

1. Whether the full faith and credit clause of Article IV, Section 1 of the United States Constitution requires the bar of one state to adopt in its bar admission proceedings findings of misconduct reached in a sister state's disciplinary proceeding.

2. Whether the due process clause of the Fourteenth Amendment to the United States Constitution prohibits the bar of one state from adopting in its bar admission proceeding findings of misconduct reached in a sister state's disciplinary proceeding in which the accused attorney was deprived of the opportunity to confront and cross-examine the witnesses against him.

3. Whether a state bar deprives an applicant of the notice and opportunity

to be heard to which he is entitled under the Fourteenth Amendment's due process clause when it notifies him that his moral character generally will be in issue in the hearing and only alerts him to specific allegations of misconduct during his cross-examination at the hearing and denies him an opportunity to defend himself against those allegations.

4. Whether a state committee of bar examiners violates the Fourteenth Amendment's due process guarantee in filling investigative, prosecutorial and adjudicative functions in admission proceedings when an independent body is available to serve the adjudicatory function.

5. Whether a state committee of bar examiners violates the Fourteenth Amendment's due process guarantee when, in an admission proceeding, it repeatedly

makes comments on and interrogates the applicant about his invocation of the privilege against self-incrimination in other proceedings.

6. Whether a state committee of bar examiners violates the Fourteenth Amendment's due process and equal protection of the laws guarantees when in denying an application for admission to the practice of law it relies on allegations of misconduct lacking evidentiary support and departs from well-settled state rules regarding burden of proof in admission cases.

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In The

SUPREME COURT

OF THE UNITED STATES

October Term, 1987

GEORGE V.,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

The petitioner, George V., respectfully prays that a writ of certiorari issue to review the judgment and order of

the Supreme Court of California entered in this proceeding on January 6, 1988.

OPINIONS BELOW

The order of the Supreme Court of California, which is not reported, appears in Appendix A. The findings and conclusion of the Committee of Bar Examiners of the State Bar of California, also not reported, appear in Appendix B. The findings of fact and recommendation of the hearing panel of the State Bar Court of the State Bar of California, also not reported, appear in Appendix C.

JURISDICTIONAL STATEMENT

The order of the Supreme Court of California was entered on January 6, 1988, and this petition is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article IV, Section 1 of the United States Constitution states, in part, that "[f]ull faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."

2. The Fifth Amendment to the United States Constitution provides, in relevant part, "[no person] shall be

compelled in any criminal case to be a witness against himself."

3. Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. Rules Regulating Admission to Practice Law in California (adopted by the Board of Bar Governors of the State Bar pursuant to the State Bar Act, California Business & Professions Code Sections 6000, et seq.), the applicable sections of which, due to their length, are set forth in Appendix D.

5. Rule 952(c) of the California Rules of Court reads, in relevant parts, as follows:

> "A petition to the Supreme Court to review any other action of the Board of Governors of the State Bar, or any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, shall be filed within 60 days after written notice of the action complained of . . . ."
>
> ". . . If a review is ordered by the Supreme Court. . . ." (Emphasis added.)

STATEMENT OF THE CASE

Petitioner was admitted to the practice of law in Missouri in September, 1975 and in Florida in July, 1976. He moved to California in 1979, and in 1983 applied to the State Bar of California for admission to practice law there. In

his California application Petitioner disclosed that he was the subject of disciplinary proceedings pending since 1980 in Florida, and on November 26, 1986, while his California application was still pending, the Florida Supreme Court disbarred him from the practice of law for misconduct which occurred in 1976, ten years previously, over the dissent of two justices who would have suspended him from practice for 90 days because of several mitigating factors: his youth at the time of the misconduct, the passage of ten years with no subsequent ethical problems, and the facts that his misconduct did not injure any party and did not violate any law.[1]

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[1] The Florida charges centered on Petitioner's concealment of his affiliation with an organization which had adverse interests to his clients and others with whom he had dealings as an attorney. See 498 So.2d 896 (1986) (Opinion report-

Meanwhile, Petitioner took and passed the California Bar examination in February, 1984, but the Committee of Bar Examiners of the State Bar of California (hereinafter referred to as the "Committee") contested his application, referred it for a hearing, and sent him a notice stating that "The hearing will concern generally your moral character and will include, but will not necessarily be limited to . . ." and then itemizing the 1976 Florida misconduct. In informal discussions prior to the hearing, the State Bar's moral character counsel, who conducted the investigation of Petitioner, and the State Bar's examiner,

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ing the Florida disbarment). Those charges were not brought until April, 1980, and they were not tried until 1985 due, in part, to the fact Petitioner had voluntarily refrained from practicing law in Florida or elsewhere while they were pending.

who represented the Bar at the hearing, led Petitioner's counsel to believe that the State Bar would rely solely on the findings of the Florida Supreme Court to contest his admission.

The California hearing was conducted over several sessions in January, 1987, two months after the Florida Supreme Court had disbarred Petitioner for his 1976 misconduct. At the hearing's outset, Petitioner contended that the federal constitutional guarantee of due process of law prohibited California from relying in any way on the Florida findings of misconduct because, inter alia, those findings were based on the admission of massive, undifferentiated hearsay evidence and surmise and conjecture based on that hearsay from hostile and palpably biased witnesses, all of which had deprived him of his fundamental rights to

confront and cross-examine the witnesses against him. He noted that the Florida Supreme Court had incorrectly rejected his due process arguments with the observation that "[i]n bar disciplinary cases, hearsay is admissible and there is no right to confront witnesses face to face." See 498 So.2d at 898. Accordingly, he proffered the record of the Florida proceedings and asked the hearing panel to review it to determine the constitutional sufficiency of those proceedings before giving any weight to the ensuing findings. Additionally, later in the hearing, Petitioner filed a memorandum of law in which he submitted that the federal constitutional full faith and credit clause did not require California to give any weight to the Florida findings, whether or not they were constitutionally flawed.

Relying on California case law that attorneys who have been disbarred, and applicants who have been involved in prior misconduct, may rehabilitate themselves and show the current moral character required to practice law, Petitioner sought to show at the hearing that he had been rehabilitated over the ten years since the Florida misconduct and that his moral character now met the standards required in California for the practice of law. Petitioner, who had invoked his privilege against self-incrimination in the Florida Bar proceedings and accordingly had not testified, now took the witness stand and was entirely forthcoming in conceding he had committed misconduct in Florida (although denying that his misconduct was as extensive and grievous as that found by the Florida Court). He made a full and candid dis-

closure of that misconduct, he expressed his regret and remorse, he presented highly favorable and uncontroverted character evidence through witnesses from the California legal profession and business community, and, in general, made a substantial showing of current good moral character as required by California law.

The State Bar produced no witnesses in rebuttal of Petitioner's showing of rehabilitation and current good moral character. Instead, it introduced the Florida Supreme Court's findings and sought to establish, through cross-examination of Petitioner, three separate allegations of more recent misconduct, as to which the Petitioner objected that he had received no prior notice.

First, Petitioner stated in his direct testimony that he had left his Florida law firm on a two-month leave of

absence in October, 1977 and gone to Canada, and that rather than returning to Florida, he had returned to his parents' home to reorganize his life. Confronted by the Bar Examiner with the fact that he had not listed a residence in Canada on his Bar application, Petitioner explained that he had visited Canada for a two-month period and had not resided there, that his legal residence during that period was his parents' Missouri residence--the address listed on his Bar application--where he received his mail and telephone messages. The Bar offered no other evidence in support of its charge that Petitioner had thereby lied on his Bar application.

Second, after one of Petitioner's character witnesses mentioned Petitioner's volunteer work in a nonprofit public interest organization Petitioner

had founded in California, the Bar Examiner, noting that Petitioner had been a named defendant in two civil suits brought in Florida in relation to his 1976 misconduct, confronted Petitioner with a copy of annual reports he had filed for 1984 and 1985 with the California State Attorney General on which he had answered "no" to the question, "were you or any of your officers, directors, or trustees a party to any Court action in which there was an alleged breach of trust?" Petitioner denied that the suits alleged a breach of trust, testifying that they were suits for invasion of privacy, and he explained that the question appeared under the heading, "Statements Regarding this Organization During the Period of this Report," and that the suits were in no way related to the organization. Moreover, he testified that

he would check into the matter and amend the filings if necessary, and, after a break in the proceedings, he testified that he had called the Attorney General's office and been advised that the questions did not require a "yes" answer since the form was only concerned with potential mismanagement of the charitable organization itself. The Bar offered no other evidence to support its charge that Petitioner had thereby lied on the forms.

Third, the Examiner confronted Petitioner with the transcript of a deposition taken on June 17, 1982 in one of the civil suits, which showed that he had answered "no" when asked, "Do you know who Nancy McLean is?" and, "Do you know who John McLean is?" The Bar contended that Petitioner thereby lied since he knew that the McLeans were the plaintiffs in the lawsuit against him and since he

had in February, 1977 corresponded and even met with their attorney about other litigation involving the McLeans. Petitioner explained that he had obviously taken the question to mean, "Do you know" the McLeans, to which the answer was indeed "no," since he had never met them; that he had taken off work and flown 3,000 miles to attend the deposition; that he obviously knew who the McLeans were since they were plaintiffs in the suit brought against him; and that in the very same deposition he had previously declared his familiarity with the complaint and its attached exhibits, which included a letter he authored in 1977 to the McLeans' attorney about the McLeans' case.

The hearing panel failed to examine the Florida record and to determine its constitutional sufficiency, and, indeed,

adopted the Florida Supreme Court findings, which it attached to its findings and recommendation, "as its own," noting that "Article IV, Section 1 of the United States Constitution states in part that 'Full Faith and Credit shall be given in each state to the public Acts, Records, and Judicial Proceedings of every other state.'" Appendix C at 11-12. It concluded that Petitioner was "not of good moral character and fitness," noting that it was "not persuaded" that his responses on the Bar application, the Attorney General forms and the civil suit deposition "were true," and that his Florida misconduct showed "a callous disregard of his oath and duties as a lawyer," and, consequently, recommended that the Committee find that he did not have the required good moral character. Appendix C at 14-16.

Petitioner, appearing without counsel, thereafter appealed to the Committee to reverse the hearing panel's recommendation and to certify him for admission to the Bar. At the review hearing, the Bar Examiner and two Committee members repeatedly commented upon and interrogated Petitioner about his invocation of the privilege against self-incrimination during the Florida disciplinary proceedings and at the deposition in the Florida civil suit. The Committee, by a vote of five to one, found that Petitioner had not demonstrated good moral character for the reasons the hearing panel had set forth, and it refused to certify him for admission. Appendix B at 1-2.

Petitioner, through counsel, thereafter petitioned the Committee for a rehearing or, in the alternative, for an

appeal to the Review Department of the State Bar Court. He requested a rehearing at which he would be afforded the opportunity to defend against the three "surprise" charges of more recent misconduct on which the hearing panel had relied, pointing out that he had not received adequate notice of those charges before the hearing. Furthermore, he requested that he be afforded the opportunity to appeal to the State Bar Court's Review Department on the grounds that the Committee could not afford him a fair and impartial hearing since it had initially screened his application and referred it to the Division of Trial Counsel of the State Bar for hearing, thus acting as investigator, prosecutor and judge. He noted that the California Board of Bar Governors had recently amended the rules to provide that appeals from admission

hearings be taken to the State Bar Court's Review Department rather than the Committee. The Committee summarily denied the petition.

Petitioner thereafter filed a petition for review of the Committee's denial of certification with the California Supreme Court, raising all of the constitutional claims herein asserted. By order dated January 6, 1988, that court summarily denied the petition for review.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS IMPORTANT, UNDECIDED AND RECURRING CONSTITUTIONAL QUESTIONS SURROUNDING THE MANNER IN WHICH THE BAR OF ONE STATE TREATS AN ADJUDICATION OF MISCONDUCT IN SISTER STATE PROCEEDINGS.

The California Bar in this admission case viewed the full faith and credit

clause as requiring it to adopt the findings made in interstate disciplinary proceedings and it refused to inquire into the constitutional fairness of those proceedings. Presumably it would act similarly were it to bring disciplinary charges against a California attorney on the basis of sister state disciplinary proceedings against him. In an age when the practice of law increasingly transcends state boundaries and multi-state admissions become necessary for the effective practice of law, this case presents important constitutional questions, bound to recur frequently, surrounding the manner in which the Bars of the various states treat the disciplinary adjudications of sister states.[2]

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[2] In re Merrell G. Vannier, Docket No. 87-1144, which involves the same Petitioner as this case, presents very similar questions. There, the Missouri

This Court should make it clear that the full faith and credit clause does not require one state to give any weight to sister state adjudications of misconduct in its own admissions and disciplinary proceedings, that the states in our federal system remain free to determine what, if any, effect to accord sister state findings in their own proceedings. See, e.g., Kentucky Bar Ass'n v. Signer, 533 S.W.2d 534, 536 (Ky. 1976); In re Weiner, 530 S.W.2d 222, 224 (Mo. 1975);

Court summarily disbarred Petitioner on the basis of the Florida adjudication without affording him any hearing on his claims that the Florida disbarment was unfairly reached in violation of his rights to due process of law and that under Missouri law he had been rehabilitated and was currently fit to practice law. Petitioner suggests that the Court may wish to consider consolidating the petitions in the two cases in order to settle the numerous important and recurring constitutional questions presented by a state's use of sister state disciplinary adjudications.

Florida Bar v. Wilkes, 179 So.2d 193, 196-97 (Fla. 1965).

At the same time, the Court should make it clear that one state may not rely on the adjudicatory findings of a sister state if they were the product of a constitutionally defective proceeding and hence unfairly reached. "One of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.'" In re Ruffalo, 390 U.S. 544, 550 (1968), quoting Selling v. Redford, 243 U.S. 46, 51 (1911).

Petitioner pointed out to the California Bar that the Florida Supreme Court had held in his case that due process of law does not require personal confrontation of witnesses in disciplinary pro-

ceedings, and he pointed to case law indicating that the rights to confront and cross-examine the witnesses against him--rights which are essential to the adversarial search for truth and thus the integrity of the fact-finding process--are in fact a due process requisite in such proceedings. See, e.g., Goldberg v. Kelly, 397 U.S. 254, 269 (1969); Willner v. Comm. on Character & Fitness, 373 U.S. 96, 102-04, 108 (1963) (majority and concurring opinions); In re Ming, 469 F.2d 1352, 1355-56 (7th Cir. 1972); United States v. Hicks, 37 F.2d 289, 292-93 (9th Cir. 1930). In deferring to the Florida findings regarding Petitioner's prior misconduct, the California Bar, in effect, deprived him of a full and fair hearing on his moral character, and it thereby compounded the constitutional

wrongs inflicted on Petitioner in the Florida proceedings.

II. THIS CASE PRESENTS IMPORTANT, UNDECIDED AND RECURRING QUESTIONS SURROUNDING THE PROCEDURAL DUE PROCESS RIGHTS OF APPLICANTS IN BAR ADMISSION PROCEEDINGS.

While the Court has held that "the requirements of procedural due process must be met before a state can exclude a person from practicing law," Willner v. Committee on Character and Fitness, 373 U.S. at 102, it has never specified what they are or whether they differ to any extent from those afforded in disciplinary or disbarment proceedings. This case presents several unresolved and recurring questions as to the process which is due in admission proceedings.

Petitioner received specific notice that his Florida misconduct was at issue, but no advance notice of the three separate charges of misconduct which arose during his cross-examination, and thus, this case presents the recurring question of whether the general Bar practice of notifying an applicant that his moral character generally is at issue constitutes adequate notice in an admission hearing. Such generalized notice is tantamount to no notice at all, for all it tells the applicant is that his entire life is open to investigation and that he should be prepared to defend it. A state Bar should be required to notify the applicant of the specific grounds on which it opposes his admission sufficiently in advance of the hearing to afford him time to prepare his defense,

for otherwise the hearing is not a meaningful one. See Armstrong v. Manzo, 380 U.S. 545 (1965).

There can be no question that the procedure the California Bar followed would not be countenanced in a disciplinary context. In re Ruffalo, 390 U.S. at 552, held that procedural due process entitles an attorney subjected to disbarment proceedings to "fair notice as to the reach of the grievance procedure and the precise nature of the charges." The Court also observed, "The charge must be known before the proceedings commence," for "[t]hey become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused." 390 U.S. at 551. Moreover, the Court pointed out that the specificity of the charges that were made in advance of the hearing may well lull the

attorney "into a false sense of security" that he need rebut only those charges. 390 U.S. at 551 n.4.

This case also presents an important, undecided and yet recurring question as to whether in Bar admission cases the same agency which determines whether an application for admission should be contested also may make the administrative determination that it should be denied. Under California law in force at the time, the Committee screened Petitioner's application and referred it for hearing and also rendered the decision that he would not be certified for admission. Rule X, Sections 102-103, Rules Regulating Admission to Practice Law in California. However, before that decision became final, the California rules governing Bar admission cases were amended to provide that an independent body,

Court, would render the decision on admission. See Rule X, SS102-103, as amended August 1, 1987. For that reason, Petitioner asked the Committee to yield its determination to the Review Department.

This Court has held that those subjected to administrative hearings have a due process right to an impartial hearing panel, but it has allowed an exception when the administrative agency is a combined system with no available impartial hearing panel. Marshall v. Jerricho, Inc., 446 U.S. 238, 242 (1980); Withrow v. Larkin, 421 U.S. 35 (1975). It has never determined the application of these principles to Bar admission proceedings.

III. THIS CASE PRESENTS IMPORTANT, RECURRING AND UNDECIDED QUESTIONS SURROUNDING THE SUBSTANTIVE FAIRNESS TO BE ACCORDED APPLICANTS FOR BAR ADMISSION.

The Examiner and the Committee commented so repeatedly upon Petitioner's invocation of his Fifth Amendment privilege against self-incrimination in the Florida legal proceedings related to his prior misconduct that it is plain that the Committee drew adverse inferences therefrom. In Spevack v. Klein, 385 U.S. 511, 515 (1967), the Court held that an attorney may not be disbarred on the ground that he asserted his privilege against self-incrimination because the Fifth Amendment prohibits "the imposition of any sanction which makes assertion of the . . . privilege 'costly.'" This case presents the equally important but undecided question of whether an applicant

may be denied admission to the Bar because he asserted his Fifth Amendment privilege in other proceedings related to the misconduct at issue in the admission proceeding.

The Committee did not explicitly deny Petitioner's admission on the ground that he asserted his privilege, but nonetheless it is plain that it drew adverse inferences therefrom which colored its determination. The Spevack majority noted that the roots of its decision lay in Griffin v. California, 380 U.S. 609, 615 (1965), which held that the Fifth and Fourteenth Amendments prohibit "either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." This case thus presents the undecided question of whether a similar prophylactic rule should be applied

in an administrative context. Cf. Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 285-87 (1977).

This case also presents the question whether the Committee violated the principle, founded in the due process and equal protection of the laws clauses, that "[e]ven in applying permissible standards, officers of a state cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory." See Schware v. Bd. of Bar Examiners, 353 U.S. 232, 239 (1956).

Under settled California law, once an applicant has made a prima facie showing that he has been rehabilitated from past misconduct and is currently fit to practice law--as Petitioner plainly did--the burden shifts to the Bar to produce

rebuttal evidence that he is not currently of good moral character, and reasonable doubts are to be resolved in the applicant's favor. See, e.g., Pacheco v. California, 43 Cal.3d 1041, 1046-47 (1987); Hightower v. State Bar, 34 Cal.3d 150, 156 (1983); Martin B. v. Comm. of Bar Examiners, 33 Cal.3d 717, 726 (1983). Here the only rebuttal evidence the Bar introduced consisted of three allegations of more recent misconduct so specious that the hearing panel's and hence the Committee's reliance on them violated Petitioner's substantive due process and equal protection rights. Moreover, the Committee adopted the hearing panel's conclusion that it was "not persuaded" that Petitioner's responses on the Bar application, the Attorney General forms and the deposition were true, thus violating the state law rules that the Bar

bore the burden of proof on those matters and that reasonable doubts should be resolved in the applicant's favor. See Appendix C at 14.

IV. PETITIONER WILL BE FORECLOSED FROM ANY JUDICIAL DETERMINATION--STATE OR FEDERAL--OF HIS FEDERAL CONSTITUTIONAL CLAIMS UNLESS THIS COURT GRANTS HIS PETITION.

The California Supreme Court summarily denied the petition for review in this case, and hence did not resolve the merits of his federal constitutional claims. See Rule 952(c), California Rules of Court. Moreover, the Court's decision in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), apparently precludes federal district court review of the California Supreme Court's denial of review. Levanti v.

Tippen, 585 F.Supp. 499 (S.D. Cal. 1984). Hence, unless this Court grants review, Petitioner will be denied any judicial resolution of his substantial federal constitutional claims.

CONCLUSION

For all these reasons, a writ of certiorari should issue to review the order of the California Supreme Court.

Respectfully submitted,

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March 4, 1988

APPENDIX A

APPENDIX A

No. SO01768

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

GEORGE V.

v.

STATE BAR OF CALIFORNIA

Petition for review DENIED.

APPENDIX B

APPENDIX B

THE COMMITTEE OF BAR EXAMINERS
OF
THE STATE BAR OF CALIFORNIA

In the Matter of the Application of:	)	FINDINGS AND CONCLUSION
MERRELL G. VANNIER,	)	
To Be Admitted to the Practice of Law	)	Case No. 86-M-15 LA

The Committee of Bar Examiners ("Committee") of the State Bar of California, while in formal session on May 16, 1987, considered the Findings of Fact and Recommendation of the hearing panel and considered the argument and testimony of the Applicant, Merrell G. Vannier, and the argument of Patrick R. Dixon, acting as the examiner for the State Bar of California. The Committee by a vote of 5 to 1 makes the following findings:

FINDINGS OF FACT

The Committee finds that Applicant Merrell G. Vannier has not demonstrated that he is of good moral character for each of the reasons set forth in the detailed and extensive Findings of Fact and Recommendation of the hearing panel filed March 26, 1987.

Nothing presented or said by the Applicant at the Committee's review hearing mitigated or vitiated any of the findings or recommendation of the panel.

CONCLUSION

Merrell G. Vannier shall not be certified to the Supreme Court of California for admission to practice law in the state of California.

APPENDIX C

APPENDIX C

STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA

DISTRICT 7

In the Matter of	)	86-M-15 LA
	)	FINDINGS OF
MERRELL G. VANNIER,	)	FACT AND
	)	RECOMMENDA-
State Bar Applicant	)	TION
	)	

The above-entitled matter having been set for hearing pursuant to the Rules Regulating Admission to Practice Law in California, and written notice having been given, including a statement of the subject of the hearing, the said matter came on regularly for hearings before this Hearing Panel on January 13, 1987, January 16, 1987, January 23, 1987, and January 27, 1987 in the offices of the State Bar of California located in Los Angeles.

Applicant was represented by David A. Clare, Esquire; the State Bar was represented by Patrick R. Dixon, Esquire, Examiner. H. Peter Young, Esquire, was co-counsel for the Applicant at the beginning of the first hearing for the limited purpose of arguing a motion in limine in behalf of the Applicant.

The Hearing Panel consisted of Leon S. Paule, Esquire, Principal Referee, Dale L. Grimm, Esquire, Referee, and R.J. Davidson, Public Member Referee. Oral testimony of the Applicant and witnesses was taken, documentary evidence was submitted, and the parties were given an opportunity to present argument.

The hearings on January 17, 1987 and January 16, 1987 were reported by Sally Kohn, C.S.R.; the hearings on January 23, 1987 and January 27, 1987 were reported by Marie L. Strickland, C.S.R.

The Hearing Panel makes the following findings of fact:

FINDINGS OF FACT

1. Applicant was born 3 March 1948 in Columbia, Missouri but grew up near Hannibal, Missouri. He was active in the Boy Scouts and achieved the designation of Eagle Scout. He served in the U.S. Navy from April 1965 to January 1968 at which time he was honorably discharged. He then attended the University of Missouri from January 1968 to June 1971, majoring in electrical engineering. From July 1971 on he attended the law school of the University of Missouri in Kansas City but took a leave of absence from May 1973 to August 1974 to take some Church of Scientology (herein, Church) training, then left to return to law school and graduated in July 1975. He was admitted to the Missouri Bar in September 1975 and

is still a member of the Bar of that state.

2. Applicant took the Florida bar examination in February 1976 and was admitted to the Bar in Florida, in July 1976.

3. Applicant was a member of the Guardians, an autonomous section of the Church responsible for overt and covert intelligence operations, and while acting in such capacity, undertook representation of certain clients in their lawsuits against the Church, and began taking affirmative actions to enable the Church to act against his clients.

4. Applicant failed to disclose his Church affiliation to his clients and to certain law firms which also had actions against the Church and, because the said law firms believed Applicant was litigating in good faith against the Church on

behalf of his own clients, gave Applicant access to their confidential files.

5. Applicant also volunteered his professional services to the Florida State Attorney's office while it was conducting an investigation of alleged criminal activity of the Church, without divulging his affiliation to the Church, thereby creating a conflict of interest. Further, while in this capacity applicant solicited the inspection of confidential files of the St. Petersburg Police Department (a client of the State Attorney's office) and turned this information (intelligence gathered by the F.B.I., the I.R.S. and the State Attorney's office) over to an agent of the Church, thereby creating a breach of trust.

6. During the period from January 1979 to October 1979 the Applicant worked for a law firm in Clayton, Missouri, then

moved to Los Angeles and performed volunteer work for the Church in California, becoming employed by that organization from March 1980 to March 1982 at which time he states he left because his contract expired.

7. In a deposition under oath in Florida on June 17, 1982, Applicant answered "No" to the question, "Do you know who Nancy McLean is?" (Florida transcript, page 42, lines 24, 25). Applicant knew at that time that the said Nancy McLean was a plaintiff in the case against him, that she was a former member of his Church (Florida transcript, page 66, lines 1-5; present transcript, page 413, lines 6-12), and that he had previously communicated orally and in writing with her attorney (page 366, lines 15-19).

8. In the same deposition, Applicant gave the same answer to the question, "Do

you know who John McLean is?" (Florida transcript, page 43, lines 1, 2), knowing that the said John McLean was also a plaintiff in the case against him, as well as a former member of his Church (Florida transcript, page 66, lines 1-5; present transcript, page 413, lines 6-12), and that he had previously communicated orally and in writing with McLean's attorney (page 366, lines 15-19).

9. From March 1982 to January 1983, the Applicant states he was involved in establishing a public interest law firm as well as a fund raising foundation to go along with it (page 408, lines 16-18).

10. In a report to the Attorney General of California under oath on August 18, 1985, and again on June 7, 1986, Applicant answered "no" to the question, "Were you or any of your officers, directors or trustees a party to any

court action in which there was an alleged breach of trust? If "Yes", attach explanation." In the present hearing before this panel, Applicant admitted that some of the litigation in which he was involved in Florida constituted a breach of trust (page 516, lines 6-9), and that he was an officer of the corporation for which the reports to the Attorney General were submitted.

11. Applicant was disbarred by the Supreme Court of Florida on November 26, 1986 (Case No. 61, 691).

12. From January 1983 to June 1983 the Applicant worked for an investment firm and from June 1983 to the present he worked and is working as a combination investigator, claims adjuster fcr an insurance adjusting company.

13. Applicant filed an Application for Examination for Admission to Practice Law

in California on November 7, 1983. In said application under oath applicant lists his residence between October 1977 to March 27, 1978 as 743 Oakridge Drive, O'Fallen, Missouri, in answer to the question "State every residence location." Applicant misstated the fact that his residence from October 1977 to December 1977 was a residence located in Canada where the applicant fled to from Florida to avoid being confronted for his activities in Florida.

14. At the present series of hearings, one of Applicant's witnesses (KOHLWECK) testified that the Applicant was contrite about his actions when he just got out of law school; that he was upset by an appearance of impropriety (page 69, lines 3-5); that he had a contrite recognition of how others discerned his actions (page 69, lines 13-15); and that through

weakness of character, Applicant had gotten into a situation (page 121, lines 1,2). When asked what the Applicant was contrite about, his witness explained that the Applicant had gotten himself into a situation and couldn't figure out a way to get out of it (page 121, lines 1-3).

15. Another witness (BEENY) testified that Applicant has a lot of regret over the incidents that had occurred. When asked what it was that the Applicant regretted, his witness stated that the Applicant was upset about the damage to the Church, "that he absolutely could not believe that he had gotten involved" (page 187, line 25; page 188, line 1), and that he regretted the effect upon his family (page 189, lines 1-3). The comments of the Applicant had arisen after the witness had criticized him.

16. Still another witness (TAUSIG) testified that the Applicant had not expressed remorse or regret with respect to particular individuals (page 223, lines 5-25). When asked what Applicant's exact words were, his witness replied "It wasn't okay that I did that" (page 239, line 6), this in reference to what Applicant had done to one of his former clients. The witness also testified that the facts in the Florida Supreme Court's decision were "not entirely consistent with what was going on back in '76 or around that time." (page 238, lines 15-17).

17. The Hearing Panel adopts as its own the findings of the Supreme Court of Florida as set forth in its Decision dated November 26, 1986 and these are set forth in full as Exhibit "A". Article IV, Section 1 of the United States

Constitution states in part that "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State."

18. Although Applicant had argued in Florida that the evidence against him consisted of unsupported hearsay, his testimony before this Hearing Panel, with certain minor, immaterial exceptions, confirms and corroborates the essential facts of the alleged unsupported hearsay.

MITIGATING CIRCUMSTANCES

19. Applicant, through his attorney, admits he engaged in professional misconduct in Florida but in mitigation points out that the incidents occurred ten (10) years ago when Applicant was then a recent law school graduate (although it was later contended that Applicant had had 25 court apperances [sic] while he

was a law student, and at the time of the various incidents Applicant was head of a law firm's litigation department) page 527, lines 15, 16' [sic] page 594, lines 17-25; page 595, line 1)), and states that Applicant has since been disciplined within the Church, and that Applicant is now rehabilitated.

20. The Applicant states he regrets "very much" what he did and feels it was not fair to his client (page 407, lines 12-15). "....as time goes on, (his) remorse grows, partly brought on by the amount of suffering and attention (he) had to put to this" (sic) (page 500, lines 7-9).

21. All of Applicant's witnesses testified that they had a high opinion of Applicant's character, that his work product was excellent and meticulously

prepared, and that Applicant was professional and competent.

The Hearing Panel upon consideration based on all of the evidence presented at the four (4) hearings, and after taking into consideration the mitigating circumstances described above, concludes that the Applicant is not of good moral character and fitness.

REASONS FOR DECISION

The Hearing Panel is not persuaded that Applicant's responses in paragraphs 7,8,10, and 13, above were truthful. The questions are clear, unequivocal, unambiguous and speak for themselves.

Applicant was an undercover agent for the Church (page 539, lines 18-23) who used his position as a member of the Florida Bar for purposes contrary to the interests of his clients (page 540, lines 22-25; page 541, lines 1-3), to his oath

as an attorney, to his professional associates and to his profession of which he was a part (page 560, lines 11-21). Before undertaking these activities applicant researched the law and concluded he would not be subjecting himself to criminal or civil liability but would be violating ethical considerations contrary to the Code of Conduct of the Florida Bar (page 556 line 5 through page 557 line 5), this does not show (as has been suggested) a young lawyer that because of his youth and inexperience did not know better but rather show a callous disregard of his oath and duties as a lawyer.

In the Florida Bar's Answer Brief to the Supreme Court of Florida, the learned counsel states, in part, that "It is reassuring to note that this is a case of first impression not only in Florida but

in the United States as well. There are simply no disciplinary cases on record involving an attorney who as part of a mission designed by an organization sets out to spy to obtain and destroy a client who is an adverse party (to that organization) in litigation."

ACTION RECOMMENDED TO BE TAKEN

The Hearing Panel recommends that Applicant be found by the Committee of Bar Examiners not to have good moral character as required by California Business and Professions Code Sections 6060(b) and 6062(b) and Rule 101(a) of the Rules Regulating Admission to Practice Law in California.

APPENDIX D

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RULES REGULATING ADMISSION TO PRACTICE LAW IN CALIFORNIA

RULE I. COMMITTEE OF BAR EXAMINERS: GENERAL POWERS

Section 1. The examining committee appointed pursuant to the provisions of The State Bar Act shall be known as the Committee of Bar Examiners of The State Bar of California. Except as otherwise indicated, the word committee as used in these rules refers to the Committee of Bar Examiners of The State Bar of California.

Section 2. The committee shall have power to examine all applicants for admission to practice law and to adminis-

ter the requirements for admission to practice. The committee shall certify to the Supreme Court for admission to practice law those persons, and only those person who fulfill the requirements for admission to practice law provided in The State Bar Act and by these rules.

* * *

Section 9. Written notice shall be given to an applicant of any determination affecting him or her; and written notice to appear before the committee, a sub-committee or a hearing panel shall be given to an applicant at least fifteen days prior to the time fixed therein for his or her appearance. . .

* * *

Section 11. After registration either as a "general applicant" or as an "attorney applicant," any person refused certification to the Supreme Court for admission

to practice may have the action of the committee reviewed by the Supreme Court in accordance with the procedure prescribed therefor.

* * *

RULE X. MORAL CHARACTER (as in force prior to August 1, 1987)

* * *

Section 102. (a) The committee shall complete an initial screening of each applicant as to moral character as soon as practicable following filing of the application. Those applicants found to possess good moral character shall be certified, provided they fulfill all other requirements for admission to practice law. All other applications shall be referred to the Division of Trial Counsel of the State Bar of Cali-

fornia (hereinafter "Division of Trial Counsel").

. . . .

(b) The Division of Trial Counsel shall investigate those applications referred to it and not later than sixty (60) days after announcement of the results of the last required part or subpart of the examination in which the applicant was successful, report the results of the investigation, together with its recommendation, to the committee. Within thirty (30) days after receipt of said report, the committee shall determine whether the applicant possesses good moral character. If the committee concludes that the applicant possesses good moral character, it shall certify the applicant to the Supreme Court for admission, provide the applicant fulfills all other requirements

for admission. Otherwise, the committee shall refer the application to the Division of Trial Counsel for further investigation or refer the application for a hearing.

(c) Within thirty (30) days of the date of any committee decision to refer the application to the Division of Trial Counsel for further investigation, notice of such action and the reason therefore [sic] shall be given to the applicant pursuant to Rule I, Section 9 of these Rules. Thereafter, the Division of Trial Counsel shall within sixty (60) days report the results of such further investigation, together with its recommendation, to the committee and the committee shall within thirty (30) days of such further report, act in one of the manners prescribed in subdivision (b) of this rule.

(d) Notice of hearing shall be given to the applicant pursuant to Rule I, Section 9, within thirty (30) days of the committee's decision to refer an application for a hearing. Such notice shall include a brief statement of the matters which will be the subject of the hearing.

* * *

Section 103. (a) The findings of fact, conclusions and recommendation of the hearing panel shall be conclusive on the applicant and the committee, and shall be deemed accepted and adopted by the committee as its decision, at the expiration of forty-five (45) days from the mailing of the notice as provided in Section 102(g) above, unless the committee or the applicant elects to proceed, or the applicant or the Division of Trial

Counsel files an application, pursuant to Section 103(b) or (c).

(b) At any time within forty-five (45) days after mailing of the notice as provided in Section 102(g), the applicant may elect or the Division of Trial Counsel may apply to have the matter set for hearing before the committee, and the applicant or the Division of Trial Counsel may apply to the committee to present additional evidence to the hearing panel or for a hearing de novo before another hearing panel. . . .

(c) The committee may order a hearing before it or a hearing de novo before another hearing panel on its own without the filing of an election or application therefor.

(d) If the applicant elects or the committee decides to have the matter set for hearing before the committee, it

shall so notify the applicant and the Division of Trial Counsel pursuant to Rule I, Section 9, within thirty (30) days of such decision or the filing of such election.

(e) The committee may act upon an application to present additional evidence or for a hearing de novo before another hearing panel or for a hearing before the committee without hearing oral argument. Notice of the committee's action on any such application shall be given to the applicant and to the Division of Trial Counsel pursuant to Rule I, Section 9, within thirty (30) days of such action. . . .

* * *

(g) The decision of the committee shall be made and notice thereof given to

the applicant and the Division of Trial Counsel pursuant to Rule I, Section 9, within thirty (30) days of the completion of the hearing. Those applicants found by the committee to possess good moral character shall be certified for admission, provided they fulfill all other requirements for admission.

(h) If an applicant is denied certification for admission to practice law by the committee because the applicant has not proven that he or she is possessed of good moral character, the applicant may thereafter proceed pursuant to Rule I, Section 11 and/or, Rule X, Section 104.

* * *

RULE X. MORAL CHARACTER (as amended effective August 1, 1987)

* * *

Section 102.

* * *

(i) . . .In response to the hearing panel decision, the applicant and the Office of Trial Counsel may file applications as prescribed by Rule 562, Rules of Procedure of the State Bar. Thereafter, the matter shall be reviewed by the Review Department, State Bar Court, as prescribed by Rules 450-453, Rules of Procedure of the State Bar.

* * *

Section 103. (a) When adopted by the Review Department, its decision shall become the final State Bar Court decision and shall be conclusive on the applicant,

the Office of Trial Counsel and the committee. The decision of the Review Department shall be promptly filed and served on the applicant, the Office of Trial Counsel and the committee. If the decision of the Review Department finds that the applicant is of good moral character, the State Bar Court shall promptly transmit to the Supreme Court that decision together with the record of proceedings before the State Bar Court and the committee, provided that those records show that the applicant has met all other requirements for admission to practice law.

(b) If an applicant is denied certification or admission to practice law because the Review Department has found that the applicant has not proven that he or she is possessed of good moral character, the applicant may thereafter

proceed pursuant to Rule I, Section 11 and/or, Rule X, Section 104.

* * *